



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,333	07/22/2003	Paul T. Van Gompel	659-1095	6978

757 7590 08/14/2006

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER

GIBSON, KESHIA L

ART UNIT	PAPER NUMBER
----------	--------------

3761

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/624,333	VAN GOMPEL ET AL.	
	Examiner	Art Unit	
	Keshia Gibson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 28-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-14 and 28-31 is/are rejected.
- 7) ☒ Claim(s) 2, 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

2. Applicant's arguments, see Appeal Brief, filed 5/22/06, with respect to the rejection(s) of claim(s) 1-31 under Nakahata I, Nakahata II, Wyant, and Snyder have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.
3. A conference panel has found Applicant's arguments in regards to Nakahata I, Nakahata II, and Wyant are considered persuasive assuming that the recitation of panel requires four terminal edges. As such, the previous grounds of rejection in view of these cited prior art are withdrawn.
4. Examiner has found Applicant's arguments in regards to Snyder persuasive in that Snyder does not expressly disclose connecting the pad to the panels and there is no adequate motivation to do so.
5. However, upon further consideration, a new ground(s) of rejection is made in view of Hopkins US 2003/0115660.

Claim Objections

6. Claim 1 is objected to because of the following informalities: in line 2 of the claim, it is suggested that the recitation "first laterally spaced side edges" be changed to

Art Unit: 3761

"laterally spaced first side edges" so as to be consistent with "laterally spaced second side edges" later in the claim. Appropriate correction is required.

7. Claim 28 is objected to because of the following informalities: it is suggested that "longitudinal spaced terminal edges" be changed to "longitudinally spaced terminal edges" if this was applicant's intent. Appropriate correction is required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 4, 6-8, 28, and 30-31 are rejected under 35 U.S.C. 102(a) as being anticipated by Hopkins (US 2003/0115660).

In regard to Claim 1 and 4, Hopkins discloses a disposable undergarment comprising: a front and rear body panels 40, 42 each comprising a pair of opposite laterally spaced side edges 102, a waist edge 44, 50 and a first crotch edge (associated with 46, 52, 60) longitudinally spaced from said waist edge; wherein the crotch edges are longitudinally spaced from each other, and wherein at least one of the crotch edges comprises at least one longitudinally extending slit 62/66 formed therein; and a crotch member

Art Unit: 3761

138/170 connected to said front and rear body panels and covering said at least one slit (whole document, especially Fig. 14, [0052], [0056],[0064]-[0065]).

In regard to Claims 6-8, the panel comprising the at least one slit further comprise an elastic material that is expandable between at least a first and second condition wherein a pair of edges defining said slit are substantially abutted when said at least one of said front and rear body panels comprising said elastic material are in said first condition, and wherein said pair of edges defining said slit are separated when said at least one of said front and rear body panels comprising said elastic material are in said second condition; the crotch member is connected to said at least one of said front and rear body panel comprising said at least one slit when said at least one of said front and rear body panel comprising said slit is in the first and second conditions ([0056]-[0057],[0067]).

In regard to Claim 28, the crotch member comprises longitudinally spaced terminal edges, which are also longitudinally spaced from the crotch edges (Figs., especially Fig. 14).

In regard to Claim 30, the list is formed through an entire thickness of the crotch edges (Figs, [0056]-[0057]).

In regard to Claim 31, the panels may comprise a laminate material and therefore may be considered to comprise a first and second layer; the slit if formed therethrough (Figs., [0056]-[0057], [0067]).

Art Unit: 3761

10. Claims 1, 4, 6-8, 28, and 30-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Hopkins.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

11. In regard to Claims 1, 4, 6-8, 28, and 30-31, see previous under 102(a) over Hopkins as presented above.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 9-11 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hopkins.

In regard to Claims 9-11, Hopkins discloses the claimed invention except for ratios relating the lengths of the front and rear body panels to the lengths of the slits.

However, the length of the slit affects or can depend on the length of the crotch seam, which is only to a small percentage of the overall length of the panels. As such, the length of the slits is considered to be a result effect variable. Thus, it would have been obvious to one of ordinary skill in the art to provide the length of the slit with a length that is between about 5% and about 75%, a length that is between about 10% and about 50%, or a length that about 15% and about 30% of the length of either the front or rear panels, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to Claims 13-14, Hopkins discloses that the side seams may take any number of forms, including both refastenable and non-refastenable seams. Thus, it would have been obvious to one of ordinary skill in the art to select fasteners to create the side seams, since it has been held within the skill of a worker of ordinary skill in the art to select a known material on the basis of its suitability for the intended use, as supported by Cooper (US 4,615,695), Repke et al. (US 4,205,679), and Jordan et al. (US 20010031954). *In re Leshin*, 125 USPQ 416.

Art Unit: 3761

15. Claims 3, 12, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hopkins in view of Blenke et al. (US 6,129,720).

In regard to Claims 3 and 29, Hopkins discloses the absorbent structure of the article can be any structure, including a laminate of fibrous webs and superabsorbent material ([0073]) but does not expressly disclose that the crotch member comprises a topsheet, back sheet, and a retention portion, wherein at least one of the topsheet and backsheet comprises an elastic material. Blenke et al. disclose a disposable article comprising an absorbent structure 38 having a top sheet 40, back sheet 42, and retention portion 44; at least the back sheet 42 comprises an elastic material (Figs., column 4, lines 39-61, column 11, lines 12-25). Blenke et al. further disclose that in conventional structures the absorbent structure typically assumes this configuration (an absorbent core (retention portion) sealed within a forming tissue (top sheet), and a barrier tissue (back sheet)) and that providing the absorbent structure with an elastic layer allows the article to move with other elastic layers and better conform with the body of the wearer (columns 1-2). One of ordinary skill in the art would have been motivated to modify the crotch member of Hopkins to a topsheet, back sheet, and a retention portion, wherein at least one of the topsheet and backsheet comprises an elastic material since Hopkins discloses that the crotch member may take any form and Blenke et al. disclose that such a configuration is typical in the art. Thus, it would have been obvious to one of ordinary skill in the art to modify the crotch member of Hopkins to a topsheet, back sheet, and a retention portion, wherein at least one of the topsheet and backsheet

comprises an elastic material since Hopkins discloses that the crotch member may take any form and Blenke et al. disclose that such a configuration is typical in the art.

In regard to Claim 12, Hopkins discloses the claimed invention but does not expressly disclose that the crotch member is minimally attached to the panels along a longitudinally extending centerline of the crotch member. Blenke disclose a disposable article comprising a crotch member 38 or 44 attached to an extensible panel 26 or 42 and further disclose minimally attaching the crotch member to the panel so as to enable the layers to move together without breaking or tearing in response to extension of the extensible layers. One of ordinary skill in the art would have been motivated to modify the crotch member of Hopkins so that it is minimally attached to the panels along a longitudinally extending centerline of the crotch member since doing so would enable the layers to move together without breaking or tearing in response to extension of the extensible layers. Thus, it would have been obvious to one of ordinary skill in the art to modify the crotch member of Hopkins so that it is minimally attached to the panels along a longitudinally extending centerline of the crotch member since doing so would enable the layers to move together without breaking or tearing in response to extension of the extensible layers.

Allowable Subject Matter

16. Claims 2 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3761

17. A search of the prior art of record fails to disclose any references, which taken alone or in combination, teach or fairly suggest neither attaching the edges of a crotch member to the garment-facing surface of a pair of body panels nor providing a crotch member with folded sides or folds in its sides.

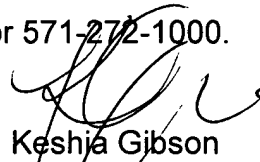
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Keshia Gibson
Examiner
Art Unit 3761

6/8/06

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER
